

**SOAH DOCKET NO. 458-08-0478**

<b>TEXAS ALCOHOLIC BEVERAGE</b>	<b>§</b>	<b>BEFORE THE STATE OFFICE</b>
<b>COMMISSION,</b>	<b>§</b>	
<b>Petitioner</b>	<b>§</b>	
<b>V.</b>	<b>§</b>	
	<b>§</b>	<b>OF</b>
<b>HERMAN LEE LOTT</b>	<b>§</b>	
<b>D/B/A MID-TOWN LOUNGE HOUSTON</b>	<b>§</b>	
<b>PERMIT NO. MB644145, LB</b>	<b>§</b>	
<b>HARRIS COUNTY, TEXAS</b>	<b>§</b>	
<b>(TABC CASE NO. 567486),</b>	<b>§</b>	<b>ADMINISTRATIVE HEARINGS</b>
<b>Respondent</b>		

**PROPOSAL FOR DECISION**

The staff of the Texas Alcoholic Beverage Commission (TABC) brought this enforcement action against Herman Lee Lott d/b/a Mid-Town Lounge Houston (Respondent), doing business at 2117 Chenevert Street, Suite N, Houston, Harris County, Texas, 77003-5845, alleging that on April 13, 2007, Respondent, or Respondent's agent, servant, or employee, gave a check or draft for the purchase of liquor that was dishonored when presented for payment in violation of the Texas Alcoholic Beverage Code (Code). Petitioner requested a nine day suspension of Respondent's permit, or in lieu of suspension, a civil penalty of \$1,350. The Administrative Law Judge (ALJ) finds that Petitioner's allegations are deemed admitted as true. Based on the violation history of this permittee, the ALJ recommends a nine day suspension of Respondent's permit. In lieu of suspension, TABC should allow Respondent to pay a \$1,350 civil penalty.

**I. PROCEDURAL HISTORY**

The hearing in this matter convened on November 2, 2007, at the State Office of Administrative Hearings Office, 2020 North Loop West, Suite # 111, Houston, Texas, and the record was closed on the same day. Staff attorney Ramona Perry represented the Petitioner. Respondent did not appear and was not represented at the hearing. Administrative Law Judge (ALJ) Rex A. Shaver presided.

On October 17, 2007, Petitioner issued its notice of hearing, directed to Herman Lee Lott d/b/a Mid-Town Lounge Houston (Respondent), doing business at 2117 Chenevert Street, Suite N, Houston, Harris County, Texas, 77003-5845, via certified mail, return receipt requested, and by regular mail delivery. After the taking of evidence, Staff moved for a default judgment, pursuant to 1 TEX. ADMIN. CODE (TAC) § 155.55. Because the hearing proceeded on a default basis, Staff's factual allegations contained in the Notice of Hearing are deemed admitted as true; therefore, the ALJ has incorporated those allegations into the findings of fact without further discussion of the evidence.

## II. FINDINGS OF FACT

1. Herman Lee Lott d/b/a Mid-Town Lounge Houston, doing business at 2117 Chenevert Street, Suite N, Houston, Harris County, Texas, 77003-5845 holds Mixed Beverage Permit, MB-644145, which includes a Mixed Beverage Late Hours Permit.
2. On October 17, 2007, the staff of the Texas Alcoholic Beverage Commission (TABC) timely sent a Notice of Hearing by certified mail, return receipt requested and by regular mail, to Respondent's last known address at 2117 Chenevert Street, Suite N, Houston, Harris County, Texas, 77003-5845. The Notice of Hearing contained information regarding the date, time, and place of the hearing; the statutes and rules involved; and the legal authorities under which the hearing would be held; and a short plain statement of the matters asserted.
3. The Notice of Hearing also contained language in 12-point, bold-faced type informing Respondent that if he failed to appear at the hearing, the factual allegations against it would be deemed admitted as true, and the relief sought in the Notice of Hearing might be granted by default.
4. The hearing on the merits was held November 2, 2007, and the record was closed on the same day.
5. Respondent did not appear at the hearing. The hearing proceeded on a default basis, and the allegations contained in the Notice of Hearing were deemed admitted as true.
6. On April 13, 2007, Respondent gave a check or draft for the purchase of liquor that was dishonored when presented for payment.

### III. CONCLUSIONS OF LAW

1. The TABC has jurisdiction over this matter pursuant to Subchapter B of Chapter 5, and § 11.61 of the Texas Alcoholic Beverage Code, TEX. ALCO. BEV. CODE ANN. § 1.01 *et seq.*
2. The State Office of Administrative Hearings has jurisdiction to conduct the administrative hearing in this matter and to issue a proposal for decision containing proposed findings of fact and conclusions of law pursuant to TEX. GOV'T CODE ANN. Ch. 2003.
3. Proper and timely notice of the hearing was provided as required by the Administrative Procedure Act, TEX. GOV'T CODE ANN. §§ 2001.051, 2001.052 and 2001.054(c); 1 TEX. ADMIN. CODE (TAC) § 155.55, and TEX. ALCO. BEV. CODE ANN. § 11.63.
4. Notice of the hearing was sufficient to allow entry of default judgment under State Office of Administrative Hearings rule, 1 TAC § 155.55.
5. Based on the above Findings of Fact, Respondent violated TEX. ALCO BEV. CODE ANN. 102.31(c), 102.32(a)(2) and 16 TAC § 45.121.
6. Based on the above Findings of Fact and Conclusions of Law, Staff is entitled to a default judgment against Respondent pursuant to 1 TAC § 155.55.
7. Based on the foregoing Findings of Fact and Conclusions of Law, the suspension of Respondent's permits for a period of 9 days is warranted pursuant to TEX. ALCO BEV. CODE ANN. §§ 61.71 and 106.13.
8. Respondent's permit and license should be suspended for nine days. TEX. ALCO. BEV. CODE ANN. §§ 61.71 and 106.13 and 16 TAC § 37.60.
9. As an alternative to suspension, Respondent should be permitted to pay a \$1,350 civil penalty. TEX. ALCO. BEV. CODE ANN. § 11.64.

**SIGNED November 14, 2007.**

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**REX A. SHAVER**

**ADMINISTRATIVE LAW JUDGE  
STATE OFFICE OF ADMINISTRATIVE HEARINGS**